

1
2
3
4
5

6 IN THE UNITED STATES DISTRICT COURT

7
8
9

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, No. CR 08-0730 WHA

11 Plaintiff,

12 v.

13 GUILLERMO HERRERA, *et al.*

14 Defendants.

15 /
16 **ORDER GRANTING OLIVER
17 MAROTA'S MOTION TO QUASH
18 SUBPOENAS SERVED BY DEFENDANT
19 GUILLERMO HERRERA**

20 The motion to quash the subpoenas served on current and former defense counsel for
21 Witness Oliver Marota is **GRANTED** (Dkt. No. 4720).^{*} The subpoenas call for the production of
22 work-product protected materials. As discussed during today's hearing and as reflected in the
23 June 23 transcript, while Witness Marota waived the attorney-client privilege, the work-product
24 protection was not waived (Tr. 11290–92).

25 Counsel for defendant Guillermo Herrera cites a patent infringement decision of the
26 district court holding that invocation of the defense of good-faith reliance on the advice of
27 counsel waived the attorney-client privilege and the work-product protection of the attorney
28 purporting to have advised the client that no infringement would occur, at least bearing on the
subject of the advice given. *See McCormick-Morgan, Inc. v. Teledyne Industries*, 765 F. Supp.
611 (N.D. Cal. 1991). In our own case, however, no witness has invoked good faith reliance on
the advice of counsel. The decision has no applicability to our circumstances.

* Instead of responding to the motion to quash, defendant Guillermo Herrera filed a motion to compel records responsive to the subpoenas (Dkt. No. 4724). For the same reasons that the motion to quash is granted, the motion to compel is **DENIED**.

United States District Court

For the Northern District of California

1 Moreover, the subpoena should be quashed under Rule 403 for the time and confusion it
2 would take to decipher raw attorney notes before the jury would outweigh whatever probative
3 value the notes have. The Court has reviewed the subpoenaed material and while there are
4 some attorney work-product notes, none of them suggest any real probative value.

5 The records provided by counsel for Witness Marota and the Federal Public Defender
6 will be filed under seal for the appellate record (but will not be served on any party).

7

8 **IT IS SO ORDERED.**

9
10 Dated: July 14, 2011.

Wm Alsop

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28